

Wednesday, October 17, 2007

House Meets At...	Votes Predicted At...
10:00 a.m. For Legislative Business	Last Vote: 6:00 p.m.
Fifteen "One-minutes" Per Side	

Any anticipated Member absences for votes this week should be reported to the Office of the Majority Whip at 226-3210.

Floor Schedule and Procedure

- **H. Res. 746—Rule providing for consideration of H.R. 3773 – Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective (RESTORE) Act (Rep. Hastings-Rules):** The closed rule provides 90 minutes of debate, with 60 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence. The rule provides that in lieu of the amendments recommended by the Committee on the Judiciary and Permanent Select Committee on Intelligence now printed in the bill, the amendment in the nature of a substitute printed in part A of the Rules Committee report, modified by the amendment printed in part B of such report, shall be considered as adopted and the bill, as amended, shall be considered as read. The rule provides one motion to recommit with or without instructions. Debate on the rule will be managed by Rep. Alcee Hastings, and consideration will proceed as follows:
 - One hour of debate on the rule.
 - Possible vote on a Democratic motion to move the previous question. **Democrats are urged to vote yes on the motion.**
 - Vote on adoption of the rule. **Democrats are urged to vote yes on adoption of the rule.**
- **H.R. 3773 - Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective (RESTORE) Act (Reps. Conyers/Reyes - Judiciary/Intelligence):** Pursuant to the rule, debate on the bill will be managed by Judiciary Committee Chair Rep. John Conyers, or his designee, for one hour and Intelligence Committee Chair Rep. Silvestre Reyes, or his designee, for 30 minutes, and will proceed as follows:
 - Ninety minutes of debate on the bill.
 - Possible debate and vote on a Republican motion to recommit the bill.

- Vote on final passage of the bill. **Democrats are urged to vote yes on final passage.**
- **H. Res. 724–Rule providing for consideration of H.R. 2095 - Federal Railroad Safety Improvement Act of 2007 (Rep. Matsui-Rules):** The structured rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Transportation and Infrastructure. The rule provides that the amendment in the nature of a substitute recommended by the Committee on Transportation and Infrastructure now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule makes in order only those amendments printed in the Rules Committee report accompanying the resolution. The rule provides one motion to recommit H.R. 2095 with or without instructions. Debate on the rule will be managed by Rep. Matsui, and consideration will proceed as follows:
 - One hour of debate on the rule.
 - Possible vote on a Democratic motion to move the previous question. **Democrats are urged to vote yes on the motion.**
 - Vote on adoption of the rule. **Democrats are urged to vote yes on adoption of the rule.**
- **H.R. 2095 - Federal Railroad Safety Improvement Act of 2007 (Rep. Oberstar – Transportation and Infrastructure):** Pursuant to the rule, debate on the bill will be managed by Transportation and Infrastructure Committee Chair Rep. James Oberstar, or his designee, and will proceed as follows:
 - One hour of debate on the bill.
 - Debate and votes on amendments to the bill.
 - Possible debate and vote on a Republican motion to recommit the bill.
 - Vote on final passage of the bill. **Democrats are urged to vote yes on final passage.**
- **Postponed Suspension Votes:** At some point today, the House will take recorded votes on the following bills, which were debated on Monday:
 1. **H.Res. 549** - Recognizing the importance of America's Waterway Watch program, and for other purposes (*Rep. Bilirakis – Transportation and Infrastructure*)
 2. **H.Con.Res. 222** - Commending NASA Langley Research Center in Virginia on the celebration of its 90th anniversary on October 26 and 27, 2007 – (*Rep. Jo Ann Davis / Rep. Drake - Science and Technology*)

Bill Summary and Key Issues

RESTORE Act of 2007

(Responsible Electronic Surveillance That is Overseen, Reviewed and Effective)

Bill Summary

Security and Liberty: *The bill provides the Intelligence Community with effective tools to conduct surveillance of foreign targets outside the United States but restores Constitutional checks and balances that were not contained in the Protect America Act (PAA – the Administration’s FISA bill.)*

The RESTORE ACT:

- 1. Clarifies that No Court Warrant is Required to Intercept Communications of Non-United States Persons When Both Ends of the Communications are Outside the United States.**
- 2. Requires an Individualized Court Warrant from the FISA Court When Targeting Americans in the United States.** (Same as current law.)
- 3. Creates a Program of Court Authorized Targeting of Non-U.S. Persons Outside the United States.** Grants the Attorney General (AG) and the Director of National Intelligence (DNI) authority to apply to the FISA Court for a single order to conduct surveillance of multiple foreign targets for up to one year – but RESTORES the following checks and balances that are absent under the PAA:
 - a. **Court Review of Targeting Procedures.** The FISA Court must review targeting procedures on a quarterly basis to ensure that they are reasonably designed to protect Americans and target only people outside the United States. In emergencies, the FISA Court review may take place after the surveillance has begun – for up to 45 days. *DNI McConnell told Congress in September that he did not oppose FISA Court review of these targeting procedures.*
 - b. **Court Review of Minimization Procedures.** The FISA Court must review minimization procedures on a quarterly basis. *DNI McConnell told Congress in September that he did not oppose FISA Court review of these minimization procedures.*
 - c. **Court Review of Guidelines** on a quarterly basis to ensure that, when the government seeks to conduct electronic surveillance of Americans, the government obtains a traditional individualized warrant from the FISA Court.
- 4. Clarifies Ambiguous Language on Warrantless Domestic Searches.** The bill clarifies and eliminates ambiguous language in the PAA that appeared to authorize warrantless searches inside the United States, including physical searches of American homes, offices, computers, and medical records.

In a letter to Congress in September, Administration officials indicated that they did not intend their legislation to authorize such warrantless domestic searches and expressed a willingness to consider alternative language.

- 5. A RESTORE ACT Authorization May Not Be Used to Target Any Known U.S. Person.** If the government learns or has reason to know that the target of surveillance is a U.S. person (for example, an American traveling abroad), it cannot use this new authority.

Assistant Attorney General Ken Wainstein acknowledged to Congress in September that the PAA could be used by the Administration to target Americans abroad without a warrant, even U.S. soldiers serving in Iraq and Afghanistan.

- 6. Limits Authority to Terrorism, Espionage, Sabotage, and Threats to National Security.** The Administration's bill allowed for surveillance for all foreign intelligence, including a broad category of information related to "foreign affairs." This bill allows the Intelligence Community to deal with the threats facing the United States from terrorism, espionage, sabotage, clandestine intelligence activities, and to collect information related to the national defense or security of the U.S., without authorizing the collection on the broad category of "foreign affairs."

- 7. Requires Regular Audits and Reports.** Requires audits every 120 days by the Justice Department Inspector General (DOJ IG) on communications collected under this authority and the number of U.S. persons identified in intelligence reports disseminated pursuant to this collection. These audits would be provided to the FISA Court and to Congress (Intelligence and Judiciary Committees).

The Administration's bill contained very limited reporting to Congress. During testimony, DNI McConnell said he did not oppose an Inspector General audit of the program to determine the scope of American communications swept up by this authority.

- 8. Requires an Audit of the President's Surveillance Program and Other Warrantless Surveillance Programs.** This audit mandates a report and documents related to these programs be provided to Congress in unclassified form with a classified annex. A separate provision requires that the President brief the intelligence committees on such programs within seven days after the date of enactment.

- 9. Requires Record-keeping of the Use of United States Persons Information.** Mandates that the Executive Branch record every instance in which the identity of a United States person whose communication was acquired by the Intelligence Community is disseminated within the Executive Branch and that it submit an annual report to Congress on such dissemination.

- 10. Adds Resources for FISA.** Adds funding for training, personnel and technology resources at DOJ, NSA and the FISA Court to speed the FISA process and to ensure that audits can be conducted expeditiously.

- 11. Reiterates the Exclusivity of FISA.** Includes House-passed bipartisan Schiff-Flake language stating that FISA is the exclusive means to conduct

electronic surveillance of Americans for the purpose of foreign intelligence collection.

- 12. No Retroactive Immunity.** The bill is silent on retroactive immunity because the Administration has refused to provide Congress with documents on the specifics of the President's warrantless surveillance program. However, the bill does provide prospective immunity for those complying with court orders issued pursuant to this authority.
- 13. Establishes En Banc Review.** Allows the FISA Court to sit en banc. The FISA Court requested this, and the Administration does not oppose it.
- 14. Provides Sunset, Transition Procedures and Report on PAA.** Sunsets this new authority on December 31, 2009, when certain PATRIOT Act provisions also sunset. However, the legislation will allow for a transition from the existing warrants to the new ones to ensure that the Intelligence Community does not go "dark" on any surveillance. The Administration will be required to submit a report on U.S.-person information collected and disseminated under the PAA authorities.

Summary of Amendment in Part A to be Considered as Adopted

The RESTORE Act would provide a new authority for the Executive Branch to conduct surveillance of persons reasonably believed to be located outside the United States. This new authority allows the government to obtain a single order to authorize surveillance on multiple targets and provides for immediate surveillance in the event of an emergency. It also includes several provisions to allow for independent oversight by the courts, the Congress and the Department of Justice Inspector General. Additional sections of the Act provide resources to Department of Justice, NSA, and the FISA Court needed to assist in auditing these new authorities and to expedite the FISA applications process. The RESTORE Act would also require the Department of Justice Inspector General to conduct an audit of the Administration's warrantless surveillance programs – to include providing authorizations and legal memoranda to Congress. It includes a sunset provision that would repeal the RESTORE Act by December 31, 2009.

Summary of Amendment in Part B to be Considered as Adopted

The amendment would clarify that no court order is required for surveillance where the sender and recipients are not known to be United States persons and reasonably believed to be located outside the United States. It would also allow the FISA Court to issue temporary orders authorizing surveillance pending the appeal of an application under section 105B. Further, it would require that any directive seeking the assistance of a communications service provider in conducting surveillance include a certification that the directive is in compliance with specific, relevant provisions of FISA. It would extend the statute of limitations for the penalty provisions of FISA from five years to ten years. Finally, it would clarify that the RESTORE Act does not confer any rights or privileges on non-United States persons.

H.R. 2095 - FEDERAL RAILROAD SAFETY IMPROVEMENT ACT OF 2007

Reauthorizes the FRA

- *Establishes the FRSA.* Re-establishes the Federal Railroad Administration as the Federal Railroad Safety Administration (FRSA), which shall consider the assignment and maintenance of safety as the highest priority. Creates a new position of Chief Safety Officer.
- *Rail Safety Strategy.* Requires the Secretary to develop a long-term strategy for improving rail safety, which must include an annual plan and schedule for, among other things, reducing the number and rates of accidents, injuries, and fatalities involving railroads.
- *Reports.* Requires regular reporting from the Department of Transportation's Inspector General and the National Transportation Safety Board on the FRSA's progress in implementing statutory mandates and open safety recommendations.
- *Financing.* Increases funded for the Federal rail safety program for fiscal years 2008 through 2011, as follows: \$230 million for FY2008; \$260 million for FY2009; \$295 million for FY2010; and \$335 million for FY2011. In addition, \$18 million is authorized for the design, development, and construction of the Facility for Underground Rail Station and Tunnel at the Transportation Technology Center in Pueblo, Colorado.

Worker and Public Safety

- *Hours of Service Reform.* Provides signal and train crews with additional rest; prohibits them from working in excess of 12 hours; extends hours-of-service standards to railroad contractors; limits limbo time; eliminates the use of camp cars; and requires railroads to develop fatigue management plans.
- *Training.* Establish minimum training standards for railroad workers, and requires the certification of conductors and carmen.
- *Medical Attention.* Prohibits railroads from denying, delaying, or interfering with the medical or first aid treatment of injured workers, and from disciplining those workers that request treatment. Also requires railroads to arrange for immediate transport of injured workers to the nearest hospital.
- *Emergency Escape Breathing Apparatus.* Provides emergency breathing apparatus for all crewmembers on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of unintentional release.
- *Installation of Safety Technologies.* Mandates implementation of positive train control by December 31, 2014, and authorizes the FRSA to establish a grant program to assist railroads in implementing this requirement. Also requires railroads to either install technologies in nonsignaled territories that alert train crews of misaligned switches or operate trains in such areas at speeds that will allow them to safely stop in advance of a misaligned switch.
- *Rail Passenger Disaster Family Assistance.* Directs the NTSB to establish a program to assist victims and their families involved in a passenger rail accident, modeled after a similar aviation disaster program.

Track Safety

- *Internal Rail Defects.* Requires railroads to conduct inspections to ensure that rail used to replace defective segments of existing rail is free from internal defects, and to perform integrity inspections to manage an annual service failure rate of less than 0.1 per track mile on high-risk corridors. Also encourages railroad use of advanced rail defect inspection

equipment and similar technologies as part of a comprehensive rail inspection program.

- *Concrete Crossties*. Directs the FRSA to develop and implement regulations for all classes of track for concrete rail ties.
- *Inspection Technologies*. Directs the FRSA to purchase, with amounts appropriated, six Gage Restraint Measurement System vehicles and five track geometry vehicles to enable the deployment of one Gage Restraint Measurement System vehicle and one track geometry vehicle in each region.

Grade Crossing Safety

- *Toll Free Number to Report Grade Crossing Problems*. Requires the railroads to establish and maintain a toll-free telephone number for reporting malfunctions of grade crossing signals, gates, and other devices and disabled vehicles blocking railroad tracks.
- *Sight Distance*. Directs the railroads to remove overgrown vegetation at grade crossings, which can obstruct the view of approaching pedestrians and vehicles.
- *Accident and Incident Reporting*. Requires the FRSA to conduct periodic audits of railroads to ensure they are reporting all accidents and incidents the National Accident Database.
- *National Crossing Inventory*. Requires railroads to report current information, including information about warning devices and signage, on grade crossings to enable the FRSA to maintain an accurate inventory of such crossings.
- *State Action Plan*. Requires the Secretary to identify on an annual basis the top 10 States that have had the most grade crossing collisions, and to work with them to develop a State Grade Crossing Action Plan that identifies specific solutions for improving safety at grade crossings.
- *Emergency Grade Crossing Improvements*. Establishes a grant program to provide emergency grade crossing safety improvements at locations where there has been a grade crossing collision involving a school bus or multiple injuries/fatalities.

Enforcement

- *Civil Penalties*. Increases civil penalties rail safety violations from \$10,000 to \$25,000. The minimum civil penalty remains \$500. For grossly negligent violations or a pattern of repeated violations, the maximum civil penalty is increased from \$20,000 under current law to not more than \$100,000.
- *Criminal Penalties*. Increases the maximum penalty for failing to file an accident or incident report from \$500 to \$2,500.
- *Enforcement Transparency*. Requires the FRA to provide a monthly updated summary to the public of all railroad enforcement actions taken by the Secretary.
- *Safety Investigations*. Makes it unlawful for any person to knowingly interfere with, obstruct, or hamper an investigation by the Secretary of Transportation or the National Transportation Safety Board.
- *Railroad Radio Monitoring*. Authorizes the FRSA to intercept and record certain railroad radio communications for the purpose of correcting safety problems and mitigating the likelihood of accidents or incidents.
- *Inspector Staffing*. Doubles the number of Federal rail safety inspectors by December 31, 2011.

Other

- *Tunnel Information.* Requires railroads to maintain certain information related to structural inspections and maintenance activities for tunnels, and requires those railroads to provide periodic briefings to the government of the local jurisdictions in which the tunnels are located, including updates whenever a repair or rehabilitation projects alters the methods of ingress and egress into and out of the tunnels.

Quote of the Day

“Conformity is the jailer of freedom and the enemy of growth” John F. Kennedy

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